

E-filing

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT
 BY: ☐ COMPLAINT ☒ INFORMATION ☐ INDICTMENT
☐ SUPERSEDING
OFFENSE CHARGED

SEE ATTACHED.

- ☐
- Petty
-
- ☐
- Minor
-
- ☐
- Misdemeanor
-
- ☒
- Felony

PENALTY: SEE ATTACHED.

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

DEFENDANT - U.S.

MARINO SANDOVAL

DISTRICT COURT NUMBER

CR10-00866

 FILED
 NOV 29 2010
 RICHARD W. WIEKING
 CLERK U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 PJH
PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

IRS and ICE

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21, or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:

☐ U.S. ATTORNEY ☐ DEFENSE

SHOW DOCKET NO.

☐ this prosecution relates to a pending case involving this same defendant

MAGISTRATE CASE NO.

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

Name and Office of Person

Furnishing Information on this form MELINDA HAAG

☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S.

Attorney (if assigned) STEPHEN G. CORRIGAN, AUSA

IS NOT IN CUSTODY

Has not been arrested, pending outcome this proceeding.

 1) ☒ If not detained give date any prior summons was served on above charges
2) ☐ Is a Fugitive3) ☐ Is on Bail or Release from (show District)**IS IN CUSTODY**4) ☐ On this charge5) ☐ On another conviction
☐ Federal ☐ State
6) ☐ Awaiting trial on other charges

If answer to (6) is "Yes", show name of institution

 Has detainer been filed? ☐ Yes ☐ No

If "Yes" give date filed

DATE OF ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY

Month/Day/Year

☐ This report amends AO 257 previously submitted
ADDITIONAL INFORMATION OR COMMENTS**PROCESS:**
☒ SUMMONS ☐ NO PROCESS* ☐ WARRANT

Bail Amount: _____

If Summons, complete following:

☒ Arraignment ☒ Initial Appearance

* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Defendant Address:

 Care of: Thomas F. Carlucci
 555 California Street, Suite 1700, San Francisco, CA 94104

Date/Time: Dec. 6, 2010/10:00 a.m. Before Judge: Magistrate Judge Ryu

Comments:

ATTACHMENT TO PENALTY SHEET

UNITED STATES OF AMERICA v. MARINO SANDOVAL

COUNT ONE: (18 U.S.C. § 371 – Conspiracy To Commit Tax Evasion)

<u>PENALTY:</u>	Imprisonment:	Maximum 5 years
	Fine:	Maximum \$250,000
	Supervised Release:	Maximum 3 Years
	Special Assessment:	Mandatory \$100

COUNT TWO-FOUR: (26 U.S.C. § 7201 – Tax Evasion)

<u>PENALTY:</u>	Imprisonment:	Maximum 5 years
	Fine:	Maximum \$100,000 plus cost of prosecution
	Supervised Release:	Maximum 3 Years
	Special Assessment:	Mandatory \$100

COUNT FIVE-FIFTEEN: (26 U.S.C. § 7202 – Failure to Account for and Pay Over Taxes)

<u>PENALTY:</u>	Imprisonment:	Maximum 5 years
	Fine:	Maximum \$10,000 plus cost of prosecution
	Supervised Release:	Maximum 3 Years
	Special Assessment:	Mandatory \$100

COUNT SIXTEEN: (26 U.S.C. § 7206(1) – False Tax Return)

<u>PENALTY:</u>	Imprisonment:	Maximum 3 years
	Fine:	Maximum \$100,000 plus cost of prosecution
	Supervised Release:	Maximum 1 Year
	Special Assessment:	Mandatory \$100

COUNT EIGHTEEN: (8 U.S.C. §§ 1324(a)(1)(A)(iii), (v)(II) and (B)(i) – Harboring Illegal Alien for Commercial Advantage and Private Financial Gain)

<u>PENALTY:</u>	Imprisonment:	Maximum 10 years
	Fine:	Maximum \$250,000
	Supervised Release:	Maximum 3 Years
	Special Assessment:	Mandatory \$100

COUNT NINETEEN: (8 U.S.C. § 1324(a)(3)(A) – Hiring for Employment at Least 10 Unauthorized Aliens over a 12-month Period)

<u>PENALTY:</u>	Imprisonment:	Maximum 5 years
	Fine:	Maximum \$250,000
	Supervised Release:	Maximum 3 Years
	Special Assessment:	Mandatory \$100

COUNT TWENTY: (42 U.S.C. § 408(a)(7)(B) – False Representation of Social Security Numbers)

<u>PENALTY:</u>	Imprisonment:	Maximum 5 years
	Fine:	Maximum \$250,000
	Supervised Release:	Maximum 3 Years
	Special Assessment:	Mandatory \$100

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DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT
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- Felony

PENALTY: SEE ATTACHED.

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

DEFENDANT - U.S.

NICOLE SANDOVAL

DISTRICT COURT NUMBER

CR10-00866

PJH

 FILED
 NOV 29 2010
 RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
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 OAKLAND
PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

IRS and ICE

☐ person is awaiting trial in another Federal or State Court, give name of court

☒ this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

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Name and Office of Person

Furnishing Information on this form MELINDA HAAG

☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S.

Attorney (if assigned)

STEPHEN G. CORRIGAN, AUSA

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2) ☐ Is a Fugitive3) ☐ Is on Bail or Release from (show District)**IS IN CUSTODY**4) ☐ On this charge5) ☐ On another conviction
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DATE TRANSFERRED TO U.S. CUSTODY

Month/Day/Year

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☒ SUMMONS ☐ NO PROCESS* ☐ WARRANT

If Summons, complete following:

☒ Arraignment ☒ Initial Appearance

Defendant Address:

Care of: Jay R. Weill

One Embarcadero Center, 8th Floor, San Francisco, CA 94111

Comments:

Bail Amount: _____

* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time: Dec. 6, 2010/10:00 a.m. Before Judge: Magistrate Judge Ryu

<u>PENALTY:</u>	Imprisonment:	Maximum 5 years
	Fine:	Maximum \$250,000
	Supervised Release:	Maximum 3 Years
	Special Assessment:	Mandatory \$100

COUNT TWENTY: (42 U.S.C. § 408(a)(7)(B) – False Representation of Social Security Numbers)

<u>PENALTY:</u>	Imprisonment:	Maximum 5 years
	Fine:	Maximum \$250,000
	Supervised Release:	Maximum 3 Years
	Special Assessment:	Mandatory \$100

E-filing

MELINDA HAAG (CABN 132612)
United States Attorney

FILED

NOV 29 2010

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

CR10-00866

PJH

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARINO SANDOVAL
and
NICOLE SANDOVAL,

Defendants.

No.

VIOLATIONS: 18 U.S.C. § 371 -
Conspiracy to Commit Tax Evasion; 26
U.S.C. § 7201- Tax Evasion; 26 U.S.C. §
7202 - Failure to Account for and Pay Over
Taxes; 26 U.S.C. § 7206(1) - False Tax
Return; 8 U.S.C. §§ - 1324(a)(1)(A)(iii),
(v)(II) and (B)(i) - Harboring Illegal Aliens
for Commercial Advantage and Private
Financial Gain; 8 U.S.C. § 1324(a)(3)(A) -
Hiring for Employment at least 10
Unauthorized Aliens Over a 12-Month
Period; 42 U.S.C. § 408(a)(7)(B) - False
Representation of Social Security Numbers

OAKLAND VENUE

INFORMATION

The United States Attorney charges:

COUNT ONE: (18 U.S.C. § 371 – Conspiracy to Commit Tax Evasion)

1. Beginning at a date unknown but no later than on or about October 4, 2004, and
continuing to on or about October 23, 2006, in the Northern District of California, the
defendants,

MARINO SANDOVAL
and
NICOLE SANDOVAL,

1 did knowingly and intentionally conspire to commit an offense against the United States, namely,
2 tax evasion, in violation of Title 26, United States Code, Section 7201.

3 2. At all relevant times,

4 A. Defendant MARINO SANDOVAL and defendant NICOLE SANDOVAL
5 (“defendants”) were partners in a chain of restaurants (“El Balazo Restaurants” or “restaurants”)
6 located in the San Francisco Bay area.

7 B. The defendants were married to each other and lived in Pleasanton, California.

8 C. Defendant MARINO SANDOVAL worked at an office located at 480 San Ramon
9 Boulevard, Suite H, Danville, California, and was primarily responsible for the day-to-day
10 activities of the restaurants located in the East Bay.

11 D. Defendant NICOLE SANDOVAL also worked in the office located in Danville
12 and was primarily responsible for the catering aspect of the business, the hiring and employment
13 of restaurant workers, and the payroll for all East Bay employees.

14 **MANNER AND MEANS OF THE CONSPIRACY**

15 3. The manner and means by which the conspiracy was sought to be accomplished included,
16 among others, the following:

17 A. The defendants recorded daily register sales of the restaurants on spreadsheets
18 containing the monthly sales for the restaurants. The defendants then concealed the daily register
19 sales and the monthly summaries from their accountant who then hired to prepare the sales tax
20 returns and federal tax returns for the restaurants, and the defendants’ joint personal income tax
21 returns.

22 B. The defendants falsely told their income tax preparer that the restaurants earned
23 less income than it did, causing the tax preparer to prepare false California Sales and Use Tax
24 Returns with the State of California Board of Equalization which understated the gross sales of
25 the restaurants.

26 C. The defendants paid employees by payroll checks and cash and concealed the cash
27 payments both from their accountant and from the Internal Revenue Service.

OVERT ACTS

4. In furtherance of the conspiracy, and to effect the objects thereof, the following overt acts were committed in the Northern District of California and elsewhere:

A. Throughout the conspiracy, defendant NICOLE SANDOVAL supervised the tracking of gross receipts for the El Balazo Restaurants catering department and maintained spreadsheets of all catering orders, including the tracking of delivery and payments.

B. Throughout the conspiracy, defendant MARINO SANDOVAL collected from the El Balazo Restaurants in the East Bay, bags that contained cash, checks, credit card receipts, and the "daily cuts" which listed the total gross income for the day, including payments made by cash, credit card, and checks and any expenses paid out, including cash taken out of the register by defendant MARINO SANDOVAL.

C. Throughout the conspiracy, defendant MARINO SANDOVAL counted the cash received from the restaurants in the East Bay, made deposits of cash and checks to the corporate bank account, and paid bills.

D. Throughout the conspiracy, the defendants paid employees of the El Balazo Restaurants in cash and checks.

E. At various times throughout the conspiracy, defendant NICOLE SANDOVAL spoke to the accountant over the telephone and falsely under reported her annual income and the annual income of her husband, defendant MARINO SANDOVAL.

F. Throughout the conspiracy, the defendants failed to provide their accountant with any written documentation of the revenues, receipts or expenses for their restaurant business.

G. On or about October 4, 2004, the defendants prepared and caused to be prepared and filed and caused to be filed their joint U.S. Individual Income Tax Return, Form 1040, with the Internal Revenue Service.

H. On or about October 6, 2005, the defendants prepared and caused to be prepared, signed, and filed and caused to be filed, their joint U.S. Individual Income Tax Return, Form 1040, with the Internal Revenue Service.

I. On or about October 23, 2006, the defendants prepared and caused to be prepared

1 and filed and caused to be filed their joint U.S. Individual Income Tax Return, Form 1040, with
2 the Internal Revenue Service.

3 All in violation of Title 18, United States Code, Section 371.

4 **COUNT TWO:** (26 U.S.C. § 7201 – Tax Evasion)

5 5. On or about October 4, 2004, in the Northern District of California, the defendants,

6 MARINO SANDOVAL
7 and
8 NICOLE SANDOVAL,

9 while married and residents of Pleasanton, California, did willfully attempt to evade and defeat a
10 large part of the income tax due and owing by them to the United States of America for the
11 calendar year 2003, by preparing and causing to be prepared, a false and fraudulent joint U.S.
12 Individual Income Tax Return, Form 1040, which was filed with the Internal Revenue Service.
13 In that return, it was stated that their joint taxable income for the calendar year 2003 was the sum
14 of \$83,576, and that the amount of tax due and owing thereon was the sum of \$18,657. In fact,
15 as the defendants then and there knew, their joint taxable income for the calendar year was in
16 excess of the amount stated on the return, and upon the additional taxable income, an additional
17 tax was due and owing to the United States of America.

18 In violation of Title 26, United States Code, Section 7201.

19 **COUNT THREE:** (26 U.S.C. § 7201 – Tax Evasion)

20 6. On or about October 6, 2005, in the Northern District of California, the defendants,

21 MARINO SANDOVAL
22 and
23 NICOLE SANDOVAL,

24 while married and residents of Pleasanton, California, did willfully attempt to evade and defeat a
25 large part of the income tax due and owing by them to the United States of America for the
26 calendar year 2004, by preparing and causing to be prepared, and by signing and causing to be
27 signed, a false and fraudulent joint U.S. Individual Income Tax Return, Form 1040, which was
28 filed with the Internal Revenue Service. In that return, it was stated that their joint taxable
income for the calendar year 2004 was the sum of \$102,684, and that the amount of tax due and
owing thereon was the sum of \$21,751. In fact, as the defendants then and there knew, their joint

1 taxable income for the calendar year was in excess of the amount stated on the return, and upon
 2 the additional taxable income, an additional tax was due and owing to the United States of
 3 America.

4 In violation of Title 26, United States Code, Section 7201.

5 **COUNT FOUR:** (26 U.S.C. § 7201 – Tax Evasion)

6 7. On or about October 23, 2006, in the Northern District of California, the defendants,

7 MARINO SANDOVAL
 8 and
 NICOLE SANDOVAL,

9 while married and residents of Pleasanton, California, did willfully attempt to evade and defeat a
 10 large part of the income tax due and owing by them to the United States of America for the
 11 calendar year 2005, by preparing and causing to be prepared, a false and fraudulent joint U.S.
 12 Individual Income Tax Return, Form 1040, which was filed with the Internal Revenue Service.
 13 In that return, it was stated that their joint taxable income for the calendar year 2005 was the sum
 14 of \$134,570, and that the amount of tax due and owing thereon was the sum of \$33,622. In fact,
 15 as the defendants then and there knew, their joint taxable income for the calendar year was in
 16 excess of the amount stated on the return, and upon the additional taxable income, an additional
 17 tax was due and owing to the United States of America.

18 In violation of Title 26, United States Code, Section 7201.

19 **COUNTS FIVE THROUGH FIFTEEN:** (26 U.S.C. § 7202 – Failure to Account for and Pay
 20 Over Taxes)

21 8. On or about the dates identified below, in the Northern District of California and
 22 elsewhere, the defendants,

23 MARINO SANDOVAL
 24 and
 NICOLE SANDOVAL,

25 residents of Pleasanton, California, who conducted a business as a partnership under the name El
 26 Balazo, with its principal place of business in Danville, California, and were required to deduct
 27 and collect federal income taxes from the total taxable wages of the employees of El Balazo, did
 28 willfully fail to truthfully account for and pay over to the Internal Revenue Service the Federal

Insurance Contributions Act (FICA) taxes and Federal Unemployment Tax Act (FUTA) taxes withheld and due and owing to the United States of America for the quarters ending on the dates and in the amounts noted below:

COUNTS	TYPE OF TAX	FORM	PERIOD	TAX DUE	DATE FILED
5	FICA	941	3/31/2004	\$11,064.20	6/28/2004
6	FICA	941	6/30/2004	\$9,645.68	9/20/2004
7	FICA	941	9/30/2004	\$7,011.28	12/20/2004
8	FICA	941	12/31/2004	\$7,149.79	3/28/2005
9	FICA	941	3/31/2005	\$8,150.84	7/4/2005
10	FICA	941	6/30/2005	\$8,465.05	10/10/2005
11	FICA	941	9/30/2005	\$6,893.54	1/2/2006
12	FICA	941	12/31/2005	\$8,091.53	4/3/2006
13	FUTA	940	12/31/2003	\$10,100.26	4/12/2004
14	FUTA	940	12/31/2004	\$5,818.68	4/11/2005
15	FUTA	940	12/31/2005	\$9,441.88	4/3/2006

All in violation of Title 26, United States Code, Section 7202.

COUNT SIXTEEN: (26 U.S.C. § 7206(1) – False Tax Return)

9. On or about September 29, 2004, in the Northern District of California, the defendant, MARINO SANDOVAL, a resident of Pleasanton, California, did willfully make and subscribe and aid, abet, assist, and cause to be so made and subscribed, a false U.S. Return of Partnership Income, Form 1065, for the calendar year 2003, which was verified by the defendant in a written declaration that it was made under the penalties of perjury and which he did not believe to be true and correct as to every material matter. The Form 1065 which was prepared and signed in the Northern District of California and filed with the Internal Revenue Service, stated that the business El Balazo Restaurants had gross receipts in the sum of \$2,142,000 for the calendar year 2003, whereas the defendant then and there knew and believed that the gross receipts were in excess of the amount

1 reported.

2 In violation of Title 26, United States Code, Section 7206(1).

3 **COUNT SEVENTEEN:** (26 U.S.C. § 7206(1) – False Tax Return)

4 10. On or about October 6, 2006, in the Northern District of California, the defendant,
5 NICOLE SANDOVAL,
6 a resident of Pleasanton, California, did willfully make and subscribe and aid, abet, assist, and
7 cause to be so made and subscribed, a false U.S. Return of Partnership Income, Form 1065, for
8 the calendar year 2005, which was verified by the defendant in a written declaration that it was
9 made under the penalties of perjury and which she did not believe to be true and correct as to
10 every material matter. The Form 1065 which was prepared and signed in the Northern District of
11 California, and filed with the Internal Revenue Service, stated that the business El Balazo
12 Restaurants had gross receipts in the sum of \$2,554,363 for the calendar year 2005, whereas the
13 defendant then and there knew and believed that the gross receipts were in excess of the amount
14 reported.

15 In violation of Title 26, United States Code, Section 7206(1).

16 **COUNT EIGHTEEN:** (8 U.S.C. §§ 1324(a)(1)(A)(iii),(v)(II) and (B)(i) - Harboring Illegal
17 Alien for Commercial Advantage and Private Financial Gain)

18 11. Beginning on a date unknown but no later than in or about 2002, and continuing to in or
19 about 2006, in the Northern District of California, the defendants,

20 MARINO SANDOVAL
21 and
22 NICOLE SANDOVAL,

23 did knowingly and in reckless disregard of the facts that an alien, Fernando A.M., had come to,
24 entered, and remained in the United States in violation of law, did conceal, harbor, and shield
25 from detection, and attempt to conceal, harbor and shield from detection, the alien in any place,
26 including any building and any means of transportation, in violation of Title 8, United States
27 Code, Sections 1324(a)(1)(A)(iii),(v)(II) and B(i).
28

COUNT NINETEEN: (8 U.S.C. § 1324(a)(3)(A)- Hiring for Employment at Least 10 Unauthorized Aliens Over a 12-Month Period)

12. Beginning on or about August 31, 2007 and continuing to on or about August 31, 2008, in the Northern District of California, the defendants,

MARINO SANDOVAL
and
NICOLE SANDOVAL,

did, during any 12-month period, knowingly hire for employment at least 10 individuals with actual knowledge that the individuals were unauthorized aliens, in violations of Title 8, United States Code, Section 1324(a)(3)(A).

COUNT TWENTY: (42 U.S.C. § 408(a)(7)(B)- False Representation of Social Security Numbers)

13. At all relevant times,

A. The defendants were owners of the El Balazo Restaurants, a chain of restaurants (pg. 2 ¶2A), that employed more than 100 employees.

B. As employers, the defendants were required to report wages of their employees to the Internal Revenue Service and to the Social Security Administration pursuant to 26 U.S.C. § 6051 and 42 U.S.C. § 432.

C. Between the years 2002 and 2007, the defendants, doing business as Taqueria El Balazo, reported employee wages to the Internal Revenue Service and to the Social Security Administration by the employees' names and social security numbers.

D. Between 2002 and 2006, the defendants received "no match" letters dated March 15, 2002, May 22, 2003, April 26, 2004, April 7, 2005, and April 28, 2006, from the Social Security Administration in which the defendants were informed that a significant number of the employees' names and social security numbers that the defendants had caused to be reported on the Wage and Tax Statements (Forms W-2) did not agree with the records maintained by the Social Security Administration.

E. Between 2002 and 2007 on approximately 152 occasions, the defendants caused to be submitted to the Social Security Administration, on the El Balazo Restaurant Employer's

Quarterly Contribution and Wage reports, the names of employees and social security numbers to which those named employees were not assigned.

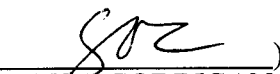
14. Beginning at a time unknown, but no later than in or about 2002, and continuing to in or about 2007, in the Northern District of California, the defendants,

MARINO SANDOVAL
and
NICOLE SANDOVAL,

did, knowingly and with intent to deceive, for the purpose of obtaining any payment or other benefit under Title 42, by and through their officers, employees and agents, submit and cause to be submitted to the Social Security Administration, El Balazo Employer's Quarterly Contribution and Wage reports that included the names of undocumented alien employees receiving wages from El Balazo Restaurants and social security numbers of these employees, when in fact the defendants well knew the reported social security numbers were false in that they were not the social security numbers assigned by the Commissioner of Social Security to these employees as reported, in violation of Title 42, United States Code, Section 408(a)(7)(B).

MELINDA HAAG
United States Attorney


MAUREEN BESSETTE
Chief, Oakland Division

(Approved as to form: )
AUSA CORRIGAN